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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 JUL 26 PM 10:25

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July 20, 2007

VIA U.S. FIRST CLASS MAIL AND FACSIMILE: (512) 239-3311

LaDonna Castaneula, Chief Clerk
Office of the Chief Clerk
Texas Commission for Environmental Quality
P.O. Box 13087
Austin, TX 78711-3025

**Re: In the Matter of the Application of Southern Crushed Concrete, Inc. to
Change the Location of Concrete crushing Facility in Harris County; SOAH
DOCKET NO. 582-05-1040; TCEQ DOCKET NO. 2004-0839-AIR**

Dear Ms. Castanuela:

Please find enclosed Protestants CASCC and Texas Pipe & Supply, Co., Inc.'s Brief Regarding Houston Ordinance 27-545. Copies of the attached have been forwarded to all parties of record via electronic mail and U.S. First Class Mail.

Thank you for your time and consideration of this matter. If you have any questions, please do not hesitate to call.

Regards,

Martina E. Cartwright, Esq.

Attachments

SOAH DOCKET NO. 582-05-1040
TCEQ DOCKET NO. 2004-0839-AIR

TEXAS
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QUALITY

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APPLICATION BY SOUTHERN § BEFORE THE TEXAS COMMISSION
CRUSHED CONCRETE, INC., TO § CHIEF CLERKS OFFICE
CHANGE THE LOCATION OF A § ON
CONCRETE CRUSHING FACILITY IN §
HARRIS COUNTY § ENVIRONMENTAL QUALITY

PROTESTANTS CITIZENS AGAINST SOUTHERN CRUSHED CONCRETE
("CASCC") AND TEXAS PIPE AND SUPPLY, INC.'S BRIEF REGARDING CITY
OF HOUSTON ORDINANCE NO. 2007-545

COMES NOW, Protestants Citizens Against Southern Crushed Concrete (hereinafter "CASCC") and Texas Pipe and Supply Co., Inc. and files this brief regarding the effect of City of Houston Ordinance No. 2007-545 on the proceedings before the Commission and would show as follows:

I.

BACKGROUND

1. During the pendency of the above-referenced action before this Commission, on or about May 9, 2007, the City of Houston overwhelmingly passed Ordinance No. 2007-545.¹
2. The ordinance, a legitimate exercise of the City's police powers, seeks to regulate the location of particular land uses, namely concrete crushing operations, reducing their concentration in various areas of the City.²
3. The ordinance promotes and protects the health, safety, and welfare of the public, while strengthening the ability of the City to inspect, and

¹ See, <http://www.houstontx.gov/environment/pdf/ordinance-concretecrushing.pdf>

² Id.

ultimately, enforce existing laws and ordinances as it pertains to these land uses.³

4. This ordinance further enhances the City's ability to protect the "least of its residents", in particular children and the elderly, by limiting the location of these uses to at least 1,500 feet from parks, schools, residential facilities, hospitals, etc.⁴
5. Without question, the reach of this ordinance satisfies a number of "environmental justice" considerations advanced by Protestant CASC, in particular the evident concentration of concrete crushing facilities in low-income and/or minority communities within the City of Houston and the negative impact borne by these particular residents.
6. Notably, "concentration"—a core concern of Environmental Justice—is rarely ever considered by this Commission in determining whether or not to grant permits/registrations to applicants.⁵ Indeed, factors such as the "negative impact" to nearby properties' value are a mere "blip" on the screen of the TCEQ, and not included in its determinations. Thus, as it pertains to the potential argument that the ordinance "conflicts" with existing state regulations, the issue or issues addressed by the ordinance are those outside of the parameters generally considered by the Commission.

³ Id.

⁴ Id.

⁵ See, August 9, 2006, Comments of Chairwoman White, regarding inability of TCEQ to consider "cumulative effects," located at: <http://www.texasadmin.com/cgi-bin/tmrcc.cgi>.

II.

ARGUMENT AND AUTHORITIES

- A. The ordinance, unanimously passed and approved by the Houston City Council, is not inconsistent with state law.

A city council or “governing body” has the power to “adopt, publish, amend, or repeal” any “ordinance, rule, or police regulation” that is “necessary and proper” to achieve a proper municipal purpose.⁶ However, the adoption of said law, ordinance or regulation cannot be inconsistent with state law.⁷

None of the parties to this action can argue that the ordinance was passed improperly i.e. proper protocol not followed. Thus, the only issue to be considered is whether the ordinance conflicts or is inconsistent with state law.

During the June 28, 2006 Agenda Meeting, both Commissioner Soward and Chairwoman White recognized the local “siting” implications presented by this particular case, but there was little that could be done as the City of Houston has no zoning.⁸

Indeed, Commission Soward opined—at the August 9, 2006 Agenda Meeting that—“the City of Houston should be determining what it allows to go into community areas.”⁹

This particular ordinance speaks to what the City “allows to go into community areas” and the action undertaken is no different than other measures implemented by the City to control the location of certain land uses in relation to residences, schools, churches, etc.

⁶ V.T.C.A., Local Government Code § 51.001

⁷ V.T.C.A., Local Government Code § 51.012. See also, Texas Health and Safety Code § 382.113.

⁸ See, June 28, 2006 Agenda Meeting, located at: <http://www.texasadmin.com/cgi-bin/tmrcc.cgi>.

⁹ See, August 9, 2006 Agenda Meeting, located at: <http://www.texasadmin.com/cgi-bin/tmrcc.cgi>.

The “concentration” of certain uses and the negative impact to community residents were issues presented to the City Council during numerous meetings with leaders and activists. Indeed, they are issues which resonate with environmental justice communities that have become unwitting hosts to every conceivable noxious, injurious land uses—whether concrete crushers, landfills, or wastewater treatment facilities. These uses have invariably been found or located in communities, representing the path of least resistance. This ordinance—which tackles a heretofore unaddressed concern of environmental justice e.g. concentration and cumulative impact—is a laudable and timely.

B. Ordinance precludes the relocation of the proposed use to 2350 Bellfort

The ordinance, which requires a permit to operate in the City limits, precludes the location of concrete crushing within 1,500 feet of a child care facility, public park, school, hospital, nursing home, or place of worship. This provision applies to operations that have not been permitted by the TCEQ prior to May 9, 2007 –such as the applicant in the instant matter.

Based on surveying conducted by the Applicant, it is possible that an elementary school, a church, and a newly developed recreational facility are all located within 1,500 feet of the boundary of the proposed use. Thus, even if the Commission approves the application of Southern Crushed Concrete, this ordinance will preclude operations at the Bellfort site.

CONCLUSION

It is the contention of the Protestants that this ordinance does impact the proceedings and should be considered—in conjunction with the new PM2.5 standards issued by the U.S. EPA--in determining whether the Commission will approve the relocation request of Southern Crushed Concrete.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and foregoing copy was sent, July 20, 2007, to all parties of record, via facsimile, electronic mail, and/or U.S. First Class Mail.



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